

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:05CV270-V**

VLADIMIR KOZLIK,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF HICKORY and)
 TOWN OF LONGVIEW,)
)
 Defendant.)
 _____)

MEMORANDUM AND ORDER

THIS MATTER is before the Court on the “Defendants’ Motion to Compel” (document #8) filed March 31, 2006. The Plaintiff has not responded to the subject motion and the time for filing a response has expired.

This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(B), and is now ripe for the Court’s consideration.

On September 28, 2005, the Plaintiff filed his Complaint in the Superior Court of Catawba County, North Carolina, alleging among other things, claims under 42 U.S.C. § 1983 for violations of his constitutional rights. On October 31, 2005, the Defendants Town of Longview and City of Hickory removed the state court action to federal court and filed their respective Answers on November 7 and 21, 2005.

Although a pretrial order had not yet been entered, the parties began discovery soon thereafter, that is, the Defendants served and the Plaintiff apparently responded to their first set of

written discovery requests.¹

On January 2, 2006, the Defendants served their Second Set of Interrogatories. Although defense counsel has informed chambers' staff that Plaintiff's counsel indicated telephonically that responses would be forthcoming, as of the present date, the Plaintiff has not responded to these requests, nor has he responded to the subject Motion to Compel.

Accordingly, the undersigned will grant the Defendants' Motion to Compel the Plaintiff to respond to the outstanding discovery requests. However, because this case is still in its early stages and the Plaintiff has responded to the Defendants' initial discovery requests, the undersigned will not require the Plaintiff and/or his counsel, C. Gary Triggs, to pay attorneys' fees and costs at this time.

However, the Court warns the Plaintiff and Mr. Triggs that dismissal and the imposition of monetary sanctions are remedies available under Rule 37 for a party's failure to obey rules governing discovery and orders of the district court. See Fed. R. Civ. P. 37(b)(2)(C); National Hockey League v. Metro. Hockey Club, 427 U.S. 639, 643 (1976); Mutual Fed. Sav. & Loan v. Richards & Assocs., 872 F.2d 88, 92 (4th Cir. 1989); and Wilson v. Volkswagen of America, Inc., 561 F.2d 494, 504-04 (4th Cir. 1977).

Accordingly, any further failure to respond to the Defendants' Second Set of Interrogatories, failure to respond to any other of the Defendants' reasonable discovery requests, or failure to otherwise comply fully with any of the Court's Orders, the Local Rules, or the Rules of Civil Procedure will likely result in the imposition of sanctions against the Plaintiff and/or his counsel

¹On March 29, 2006, the parties filed their Certification of Initial Attorneys' Conference and the same day, the undersigned issued the Pretrial Order and Case Management Plan. See documents ## 6 and 7. This matter is scheduled for an Initial Pretrial Conference in chambers on June 7, 2006 at 2:30 p.m. See document #9.

personally. Sanctions may include the Plaintiff and/or his counsel being required to pay the Defendants' costs, including reasonable attorney's fees in their entirety, and may also include dismissal of the Complaint with prejudice.

NOW THEREFORE, IT IS ORDERED:

1. Defendants' "Motion to Compel" (document #8) is **GRANTED**. On or before May 26, 2006, the Plaintiff shall serve full and complete responses to the Defendants' Second Set of Interrogatories.

2. The parties shall bear their own costs at this time.

3. Mr. Triggs shall promptly serve a copy of this Memorandum and Order on the Plaintiff.

4. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties; and to the Honorable Richard L. Voorhees.

SO ORDERED.

Signed: April 25, 2006

Carl Horn, III

Carl Horn, III
United States Magistrate Judge

